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Report of the Secretary-General on Ethiopia and Eritrea

I. Introduction

1. The present report is submitted pursuant to paragraph 12 of Security Council resolution 1320 (2000) of 15 September 2000, and provides an update on developments in the Mission area since my previous report, dated 18 July 2007 (S/2007/440). The report also describes the activities of the United Nations Mission in Ethiopia and Eritrea (UNMEE).

II. Situation in the Temporary Security Zone and adjacent areas

2. The military situation in the Temporary Security Zone and adjacent areas remained tense during the reporting period. Eritrea has maintained troops and heavy military equipment, including tanks in the Zone since October 2006. The Ethiopian troops and heavy equipment that were deployed in areas adjacent to the Zone at that time have remained in position. During the reporting period, Eritrea inducted additional military personnel and equipment into the Zone and both countries conducted rotations, training and troop regroupment of their forces in the border area.

3. The Eritrean Defence Forces personnel have continued the construction of new defences inside the Temporary Security Zone, including in close proximity to Badme. In this connection, UNMEE observed a number of new camps of Eritrean Defence Forces erected in Sector West and Sector Centre. The Eritrean Defence Forces also conducted troop rotations in Sector Centre and Subsector East, as well as a gradual replacement of the militia manning posts in the Zone by regular military personnel.

4. Since early September, a large number of Eritrean Defence Forces, heavy military equipment and ammunition have been deployed to the Temporary Security Zone and the areas adjacent to it. According to UNMEE estimates, during September and October, Eritrea moved an estimated 1,000 additional troops, 10 heavy machine guns and five truckloads of small arms ammunition into the Zone in Sector Centre, bringing the total number of troops inducted into that sector since December 2006 to more than 2,580 military personnel. On 16 October, UNMEE confirmed the presence of three Eritrean artillery pieces inside the Zone near Tsorena in Sector Centre. As regards Subsector East, the strength of Eritrean

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Defence Forces inducted into the Zone in that area is now approximately 600 military personnel. In Sector West, Eritrea inducted approximately 2,025 military personnel into the Zone in October this year, in addition to some 2,000 troops, tanks and artillery, which had been inducted into that Sector in October 2006. Continued Eritrean restrictions have not made it possible for the Mission to monitor all Eritrean troop movements and deployments in the Zone. As underlined in my earlier reports to the Council, the continued presence and deployment of Eritrean Defence Forces and heavy military equipment inside the Zone constitute direct violations of the Algiers Agreement on Cessation of Hostilities of 18 June 2000.

5. During the reporting period, the Ethiopian Armed Forces conducted training and reinforced defences, including in areas around Badme, and carried out live firing exercises, involving personal and automatic weapons in Sector Centre and Sector West. The Ethiopian Armed Forces have continued to deploy a strategic reserve force in Sector West. UNMEE observed that Ethiopian forces redeployed some 14 armoured personnel carriers and 18 medium artillery guns in the locations of the three mechanized divisions in Sectors Centre and West, approximately 20 to 30 km south of the areas adjacent to the Temporary Security Zone. A further 39 armoured personnel carriers were observed moving to the mechanized formations deployed in Sector West. In addition, from 1 to 10 October, UNMEE observed the Ethiopian Armed Forces deploying a total of 22 T-55 tanks and one armoured recovery vehicle in adjacent areas in Sector Center approximately 10 km from the Zone. The Ethiopian Armed Forces stated to UNMEE that the deployment had been undertaken in response to the presence of 30 tanks that the Eritrean Defence Forces had located some 15 km from the border of the Zone. UNMEE could not independently verify that allegation because of existing Eritrean restrictions. In the meantime, Ethiopian Armed Forces tanks and artillery guns observed in the area of Bure in Subsector East earlier this year had been pulled back south of the adjacent area.

6. Although the leaders of Ethiopia and Eritrea have repeatedly stated that they do not intend to initiate hostilities, the build-up of the forces on both sides of the border area is a cause of serious concern. In this connection, on 15 September, Ethiopian authorities alleged that an Eritrean sniper fired at Ethiopian troops in the area of Zela Ambessa, in Sector Centre, and wounded an Ethiopian soldier. Eritrean commanders denied knowledge of the incident. Another shooting incident between Eritrean and Ethiopian forces allegedly took place in the same area on 8 October.

7. During the reporting period, UNMEE continued to assist the parties with investigations into cross-border incidents, including reports of cattle rustling. The Mission also facilitated the repatriation of Ethiopian and Eritrean civilians who inadvertently had crossed the border.

III. Restrictions on freedom of movement

8. During the reporting period, Eritrea continued to maintain all restrictions that it had imposed on UNMEE. The ban on United Nations helicopter flights in its airspace and the exclusion from service, in Eritrea, of international personnel of certain nationalities remain in force. Eritrea also maintained the 45 permanent (longer than six months) restrictions on the Mission's freedom of movement,

including night patrols, and continued to restrict its patrols to the main supply routes within the Temporary Security Zone in all Sectors. In addition, Eritrea maintained the closure of the strategic bridges between Om Hajer in Eritrea and Humera in Ethiopia, and between Shilalo in Eritrea and Shiraro in Ethiopia, both in Sector West. On 26 September 2007, Eritrea imposed new restrictions on the Mission's demining operations in Sector Centre. From the first week of June, Eritrea had introduced new restrictions in Subsector East, preventing Mission patrols from monitoring areas away from the main road.

9. On 11 August, Eritrean police detained a military observer patrol in Sector Centre for entering the town of Tsorena after 1800 hrs. On 29 August, during their compensatory time off in Asmara, two military observers were detained by the Eritrean authorities for more than two days for visiting an area where prior Eritrean clearance is required. They were later released following a formal protest lodged by UNMEE. Six weeks after the incident, the Eritrean authorities demanded that both military observers leave the country. The military observers subsequently left the country on 12 October 2007.

10. While the restrictions imposed by Eritrea on UNMEE operations seriously undermine the ability of the Mission to effectively monitor the Temporary Security Zone and the adjacent areas, particularly in Sector West, the Mission's static checkpoints continue to monitor, to the extent possible, the movements of Eritrean troops and heavy equipment into and out of the Zone, particularly in Sector Centre and Subsector East, where the difficult terrain bars major military movements away from the main roads.

11. For its part, Ethiopia has lifted all restrictions it had previously imposed on the Mission.

IV. Military Coordination Commission

12. The Mission has not been able to convene any further meetings of the Military Coordination Commission since the 37th meeting, held on 31 July 2006. Ethiopia has indicated to the Mission that it would resume its participation in the Commission only after Eritrea restores the integrity of the Temporary Security Zone. At the same time, Eritrea has stated to UNMEE that if Ethiopia conveys a positive response, Eritrea would attend the meetings of the Commission. The Mission is still awaiting an official response from both countries to invitation letters to a meeting of the Military Coordination Commission sent to them by the Mission on 21 June 2007. The Mission has repeatedly urged the Ethiopian authorities to resume their participation in meetings of the Commission.

V. Implementation of Security Council resolution 1767 (2007)

13. Further to the letter dated 8 June 2007 from the Minister for Foreign Affairs of Ethiopia addressed to the President of the Security Council (see S/2007/350), reiterating that Ethiopia had accepted the 2002 delimitation decision of the Eritrea-Ethiopia Boundary Commission without preconditions, Ethiopia continued to assert that the security conditions for demarcating the border do not exist. In this connection, Ethiopia has maintained that the persistent violation of the Temporary

Security Zone by Eritrea has rendered the Zone virtually non-existent and that the restrictions imposed by Eritrea on the Mission have seriously reduced the Mission's capability to monitor the Zone, as provided for in the Algiers Agreements.

14. On 22 September, the Minister for Foreign Affairs of Ethiopia sent a letter to his Eritrean counterpart stating that Eritrea had committed a material breach of the Algiers Agreements by introducing troops and heavy military equipment into the Temporary Security Zone since October 2006. The letter further stated that, unless Eritrea returns to compliance with the Agreements, the breach could force Ethiopia to consider resorting to "legal and peaceful options" under international law, including terminating or suspending its participation in the Agreements. It further reiterated Ethiopia's rejection of the planned boundary demarcation by the Eritrea-Ethiopia Boundary Commission using map coordinates.

15. On 27 September, the Minister for Foreign Affairs of Eritrea addressed a letter to the President of the Security Council, the Witnesses of the Algiers Agreements, the European Union and myself, in response to the Ethiopian letter of 22 September. The Minister stressed in the letter that the Eritrea-Ethiopia Boundary Commission was the "sole legal forum" for resolving the demarcation issue. The letter further indicated that Ethiopia "has refused to cooperate with the Boundary Commission's lawful orders almost since the day that the Award was first announced in April 2002" and had committed "repeated violations of the Algiers Agreement". The Minister also urged the Security Council to enforce the decision of the Commission.

16. As part of my continued efforts to engage the two parties in the peace process, I dispatched the Under-Secretary-General for Political Affairs on a mission to Eritrea and Ethiopia from 27 to 29 August, during which he held consultations with the President of Eritrea and the Prime Minister of Ethiopia on matters pertaining to the peace process, as well as on regional issues. I was encouraged by the constructive talks the Under-Secretary-General held with the two leaders, as well as the willingness of the two parties to overcome the current impasse in their relations.

17. On 2 October, I held separate meetings with the Minister for Foreign Affairs of Eritrea and Ethiopia. The Minister for Foreign Affairs of Eritrea reiterated the position of his Government that Eritrea was prepared to meet all the requirements of the Eritrea-Ethiopia Boundary Commission, including some easing of restrictions imposed on UNMEE and the withdrawal of troops from the Temporary Security Zone, insofar as their presence impinged on operations of the Boundary Commission. The Minister for Foreign Affairs of Eritrea also rejected any possibility of dialogue on normalization before the demarcation of the border and indicated that any discussions with Ethiopia at this stage could be only on how to put border pillars on the ground. The Minister for Foreign Affairs of Ethiopia confirmed the desire of his Government to move the demarcation process forward, but indicated that it would be impossible as long as Eritrean troops remained deployed in the Zone, adding that dialogue on the many practical issues related to boundary demarcation remained necessary.

VI. Eritrea-Ethiopia Boundary Commission

18. Representatives of Eritrea and Ethiopia participated in the meeting convened by the Eritrea-Ethiopia Boundary Commission at The Hague on 6 and 7 September. However, no progress was made towards the implementation of the 2002

delimitation decision of the Eritrea-Ethiopia Boundary Commission. A detailed account of the work of the Commission is contained in annex II to the present report.

VII. Administration and support

19. The provision of administrative and logistical support to UNMEE in Eritrea has been hampered by the continued restrictions imposed by the Eritrean authorities, particularly the ban on helicopter flights, the exclusion from service in Eritrea of United Nations personnel of certain nationalities, restrictions on the supply of diesel fuel, and other restrictions. These restrictions continued to pose major operational difficulties to the Mission.

VIII. Mine action

20. Landmines and unexploded ordnance continued to pose a major threat to people who live and work inside the Temporary Security Zone and the adjacent areas. During the reporting period, UNMEE continued to carry out humanitarian demining operations. Some 181,255 m^2 and 168 km of road were cleared, and 1,019 km of road were verified during the reporting period. The Mission also carried out the disposal of unexploded ordnance, during which it destroyed 43 anti-tank mines, four anti-personnel mines and 546 pieces of ordnance. The Mission continued to conduct mine-risk education for the local population and newly arrived Mission personnel. Investigations were conducted into six mine incidents involving local civilians in Sector West and Sector Centre, in which nine persons died and six were injured. The demining operations were hindered, however, by new restrictions imposed by Eritrea, as described in paragraph 10 above.

IX. Human rights

21. Consistent with the mandate of UNMEE to coordinate its activities in the Temporary Security Zone and areas adjacent to it with humanitarian and human rights activities of the United Nations and other organizations in those areas, the Mission continued to monitor the human rights situation in the Temporary Security Zone and areas adjacent to it. On 27 July, under the auspices of the International Committee of the Red Cross, the Mission monitored the repatriation of 576 Ethiopian nationals from Eritrea, and 20 Eritrean nationals from Ethiopia.

22. On 31 July, UNMEE conducted a field visit to Shimelba refugee camp in Ethiopia to monitor the situation of Eritrean refugees. The camp administration informed the Mission that about 350 to 400 Eritrean asylum-seekers had reported to the camp every month in the recent past. Camp officials reported that the nutritional conditions of the refugees had improved following the efforts by the World Food Programme to raise resources in order to ensure recognized food ration standards for the camp refugees.

X. Public information

23. UNMEE continued to work actively to meet strong local demand for information, including through the issuance of the Mission's bimonthly magazine, *UNMEE News*, its weekly radio magazine programme and video products. All of the information products are printed and broadcast in the local languages and in English. They are also available on the Mission website, and from outreach centres located in Addis Ababa, Mekele and Adigrat, in Ethiopia. The UNMEE outreach centres in Eritrea have remained closed since 2003.

XI. Humanitarian situation

24. In Eritrea, following the return and resettlement of 20,000 internally displaced persons in the Gash Barka region, in western Eritrea, in May and June, with the support of the United Nations and its partners, all internally displaced persons camps in the region have since been closed. However, both the resettled internally displaced persons and the 12,000 others remaining in camps in the Debub region, in southern Eritrea, still require humanitarian assistance, particularly basic needs. Since the resettlement programme is ongoing, the remaining camps will close when its residents have all been resettled.

25. The Government of Eritrea informed the United Nations, soon after a consultative process on food security for the Horn of Africa held in Nairobi in June 2007, that it was in the process of preparing its food security road map. Meanwhile, the rainy season started, and generally remained above average. As a result, overall official projections for the current agricultural season are favourable.

26. As part of flood preparedness and early response, the Ethiopian Government and its humanitarian partners launched, on 13 August 2007, a joint flood contingency plan seeking $21 million to address relief and recovery needs of an estimated 324,000 beneficiaries under the most likely scenario. In addition, the Humanitarian Response Fund pledged $2 million for flood preparedness. Due to a lack of potable water and poor sanitation services, acute watery diarrhoea continued in a number of regions in Ethiopia. To address the problem, the Central Emergency Response Fund has granted Ethiopia $3 million to support water, sanitation and health-related projects.

XII. Conduct and discipline

27. Since my previous report, UNMEE has reported three cases of misconduct, of which two cases are under investigation. The third case, relating to an UNMEE staff officer who was forced by local authorities to leave Eritrea on grounds of misconduct, is nearing completion. UNMEE also continued to train its staff; more than 1,500 Mission personnel were trained in conduct-related matters, including sexual exploitation and abuse, during the reporting period.

28. UNMEE conducted a survey of recreation facilities in the Mission area to prepare a recreation and welfare strategy for Mission personnel. It also launched initiatives such as exit interviews and a helpline to provide advice on discipline. Exit interviews enable outgoing staff to provide suggestions for improving systems

and mechanisms and identifying flaws. The helpline allows staff to obtain advice from the conduct and discipline unit. Furthermore, a radio programme broadcast in four languages has been introduced to inform the local communities about the zero-tolerance policy of the United Nations and a complaint mechanism.

XIII. HIV/AIDS activities

29. During the period under review, the UNMEE HIV/AIDS Unit continued to conduct induction training to incoming military and civilian personnel, and awareness training for members of military contingents. It also provided voluntary counselling and testing. The unit increased outreach to the local population in collaboration with the UNMEE Public Information Office, the Human Rights Office and the level-1 hospital.

XIV. Observations

30. The meeting of the two parties with the Eritrea-Ethiopia Boundary Commission, held on 6 and 7 September at The Hague, failed to resolve the impasse between the two countries on the demarcation of the boundary. The continued stalemate on this issue, the tension between the two parties and the military build-up along the border area are matters of serious concern.

31. There is no other option but for the two parties to find common ground that would allow the Eritrea-Ethiopia Boundary Commission to proceed with the demarcation of the border. The United Nations remains firmly committed to the full and unconditional implementation of the final and binding delimitation decision, which the Eritrea-Ethiopia Boundary Commission announced on 13 April 2002. I urge the parties to extend full cooperation to the Commission, without further delay, with a view to proceeding to the boundary demarcation on the basis of the Commission's 2002 delimitation decision. In this regard, I urge Eritrea and Ethiopia to cooperate with and facilitate the work of the Commission before the November 2007 time frame set by the Commission. On my part, I will continue to engage both parties to find a mutually acceptable way to implement the final and binding 2002 delimitation ruling of the Commission.

32. I also urge Eritrea and Ethiopia to comply fully with the Agreement on Cessation of Hostilities and the Peace Agreement, which both parties signed in Algiers on 18 June and 12 December 2000, respectively. The two Agreements remain the only basis for the peaceful resolution of the border conflict and the establishment of a lasting peace between the two countries.

33. It is also essential to preserve the integrity of the Temporary Security Zone. I therefore call on Eritrea to withdraw its forces and military equipment from the Zone and to lift its restrictions on UNMEE. The continued military build-up in the border area is a cause of serious concern, which has already resulted in shooting incidents that underscore the risk of further miscalculation. I call upon both parties to exercise the utmost restraint, and to pull back their forces and reduce military activities in the border area. I also urge the parties to reactivate the Military Coordination Commission, which provides a unique framework for dialogue

between military representatives of the two parties to peacefully address issues of border security.

34. Ultimately, Ethiopia and Eritrea bear the primary responsibility for overcoming their differences and moving the peace process forward. I deeply appreciate the efforts undertaken by some Member States in seeking to bridge the divide between the two parties. Such efforts, however, can bear fruit only if both parties display the political will and flexibility necessary to reach a solution to their dispute.

35. In conclusion, I wish to express my gratitude to all civilian and military personnel of the Mission for their continued commitment, hard work and perseverance in an increasingly difficult and stressful working environment. I pay tribute to all the partners of the Mission, the African Union, the Witnesses to the Algiers Agreements and the Friends of UNMEE, as well as the United Nations country team, humanitarian agencies and other international organizations, and Member States, for the support they continue to lend to the peace process. I also pay special tribute to the troop-contributing countries for their sustained support to this important peacekeeping operation.

Annex I

United Nations Mission in Ethiopia and Eritrea: military contributions as at 10 October 2007

Country	*Military observers*	*Troops*	*Staff*	*Total*	*National support elements*
Algeria	8	0	0	8	
Austria	2	0	0	2	
Bangladesh	7	0	5	12	
Bolivia	5	0	0	5	
Bosnia and Herzegovina	5	0	0	5	
Brazil	7	0	0	7	
Bulgaria	4	0	0	4	
China	6	0	0	6	
Croatia	4	0	0	4	
Czech Republic	2	0	0	2	
Denmark	3	0	0	3	
Finland	5	0	0	5	
France	1	0	0	1	
Gambia	2	0	1	3	
Germany	2	0	0	2	
Ghana	12	0	3	15	
Greece	2	0	0	2	
Guatemala	5	0	0	5	
India	8	701	14	723	
Iran (Islamic Republic of)	3	0	0	3	
Jordan	8	559	11	578	
Kenya	10	114	4	128	
Kyrgyzstan	4	0	0	4	
Malaysia	7	0	3	10	
Mongolia	4	0	0	4	
Namibia	4	0	1	5	
Nepal	4	0	0	4	
Nigeria	8	0	2	10	
Norway	3	0	0	3	
Pakistan	5	0	0	5	
Paraguay	4	0	0	4	
Peru	4	0	0	4	
Poland	3	0	0	3	
Romania	5	0	0	5	
Russian Federation	3	0	0	3	

Country	*Military observers*	*Troops*	*Staff*	*Total*	*National support elements*
South Africa	2	0	0	2	
Spain	3	0	0	3	
Sri Lanka	4	0	0	4	
Sweden	2	0	0	2	
Switzerland	1	0	0	1	
Tunisia	8	0	3	11	
Ukraine	3	0	0	3	
United Republic of Tanzania	8	0	2	10	
United States of America	2	0	0	2	
Uruguay	5	33	4	42	
Zambia	9	0	3	12	
Total	**216**	**1407**	**56**	**1679**	

Annex II

Twenty-fifth report of the Eritrea-Ethiopia Boundary Commission

1. This is the twenty-fifth report of the Eritrea-Ethiopia Boundary Commission, covering the period from 10 July to 26 September 2007. The previous report covered the period from 1 April to 9 July 2007.

2. In its previous report, the Commission noted that it had decided to convene a meeting with the Parties in September 2007 in order to ascertain what progress, if any, could be made towards the resumption of its demarcation activities, and noted the replies of the . ..ties of 25 and 27 June 2007 indicating that both Parties were willing to attend su a meeting.

3. On 10 July 2007, the President of the Commission wrote to the Parties inviting them to a meeting to be held in New York at the offices of the Secretary of the Commission, who is also the United Nations Cartographer.

4. In order to comply with United Nations Administrative Rules for holding meetings at United Nations Headquarters, the Commission requested logistical support from the Government of Norway, as a Member of the United Nations which both Parties had accepted as a long-standing neutral supporter of the Commission's work, to reserve rooms for it at United Nations Headquarters. The Government of Norway acceded to this request. The Commission was grateful for this assistance.

5. The President in his letter of invitation stated:

> The purpose of the meeting will be to consider how pillars may be erected along the line set out in the Annex to the Commission's Statement of 27 November 2006 taking into account the need to overcome the problems referred to in paragraphs 10 and 11 of the Commission's Statement of 27 November 2006.
>
> The Commission looks forward to this meeting with the representatives of the Parties. It hopes that they will come with sufficient authority to be able to agree upon the measures necessary to fulfil the purpose of the meeting, in particular that both Parties fully co-operate without conditions with the Commission, and take all necessary action to enable its demarcation teams to perform their functions.
>
> Please confirm at your earliest convenience that your appropriately authorized representatives will attend the meeting.

6. Following a reminder from the Registrar of the Commission on 2 August 2007, Eritrea's representative replied on 9 August 2007 confirming Eritrea's participation and that Eritrea's representative would be "prepared and fully authorized to discuss the implementation of the 13 April 2002 Delimitation Award through demarcation". Counsel for Ethiopia also replied on 9 August 2007 indicating that Ethiopia was prepared to attend a meeting convened by the EEBC on 6 September 2007, but requesting that the meeting be convened in The Hague rather than at the premises of the United Nations in New York, in order to avoid creating the impression that the Commission was "an agency of the United Nations". Eritrea by letter of its

representative dated 18 August 2007, opposed this request and expressed support for the Commission's "undoubted authority to hold meetings where it thinks best".

7. After considering the views of the Parties, the Commission decided to hold the meeting at its seat, which is at the Permanent Court of Arbitration in The Hague, and the Registrar informed the Parties of this decision by e-mail dated 18 August 2007.

8. At the meeting held on 6 and 7 September 2007 Eritrea was represented by His Excellency Mr. Mohammed Sulieman Ahmed, Ambassador of Eritrea to the Netherlands, Professor Lea Brilmayer, Co-Agent, and Ms. Lorraine Charlton. Ethiopia was represented by His Excellency Mr. Fisseha Yimer, Co-Agent, Ambassador and Permanent Representative to the United Nations in Geneva, Mr. B. Donovan Picard, Counsel, and Mr. Edward B. Rowe, Counsel. Representatives of UNMEE were present. The Commission was assisted by Mr. Vince Belgrave, Chief Surveyor, and Mr. Bill Robertson, Special Consultant.

The Agenda of the Meeting on 6 and 7 September 2007

9. An Agenda was circulated to the Parties on 27 August 2007 specifying the conditions required to be satisfied by each Party in order for the Commission to be enabled to resume its activities. Those conditions were:

For Eritrea

- to lift restrictions on UNMEE insofar as they affect the EEBC;
- to withdraw from the Temporary Security Zone (TSZ) insofar as the present position impinges on EEBC operations;
- to provide security assurances;
- to allow free access to pillar locations; and,

For Ethiopia

- to indicate its unqualified acceptance of the 2002 Delimitation Decision without requiring broader ranging negotiations between the Parties;
- to lift restrictions on movement of EEBC personnel;
- to provide security assurances;
- to meet payment arrears;
- to allow free access to pillar locations.

10. The Agenda also indicated that if sufficient progress were to be made on the above points, the Meeting would proceed to consideration of the schedule of work to be undertaken with regard to demarcation on the ground. The proposed schedule was annexed to the Agenda.

The Commission's Meeting with the Parties of 6 and 7 September 2007

11. The President of the Commission opened the meeting with a statement setting out the purpose of the meeting and recalling the Commission's Statement of 27 November 2006. The President recalled the list of locations identified by the

Commission for boundary pillars using coordinates accurate to within one metre, which took into account the observations of the Parties. The President stated that "If the Commission had been able to go on the ground in the way originally planned, this is where the pillars would have been fixed, subject to the processes outlined in the Demarcation Directions. We hope that this indication of the adjusted line would enable the Parties to take a more positive approach to demarcation on the ground as they would see what [we] had in mind."[1]

12. The President also recalled the terms of paragraph 22 of the Commission's Statement of 27 November 2006, which gave the Parties twelve months to consider their positions and seek to reach agreement on the emplacement of pillars. The President noted that less than three months now remained for the Parties to take such action and that, if the parties did not agree to conclude the demarcation themselves or allow the Commission to do so by the end of November, the boundary would automatically stand as demarcated, along the line specified in the Annex to the Statement of 27 November 2006, and the Commission's mandate would thus be fulfilled.

13. The President stated,

> By the end of today, or if our meeting should continue by the end of tomorrow, the Commission would like to know whether the Parties have difficulty with the November 2006 line, or with the fact that it is not marked on the ground. In other words, is the concern with the substance of the line or with the procedure? If the former, that is the substance of the line, what are the difficulties? If the latter, why not agree to let the Commission place the pillars at the indicated locations.[2]

The President also emphasized that there was no room for delaying tactics by either of the Parties.

14. The President acknowledged the letters received that day from the Co-Agent for Eritrea and from the President of Eritrea, both dated 5 September 2007, which "contain significant indications of willingness to see the process of demarcation resumed", and invited Professor Brilmayer to make submissions based on the positions set out in her letter. Copies of the above-mentioned letters are annexed to this report.

Eritrea's Position

15. Professor Brilmayer's letter of 5 September 2007 responded to each of the agenda items in turn.

- On lifting restrictions on UNMEE insofar as they affect the EEBC:

  Eritrea recognizes UNMEE'S essential and positive contribution to the process of demarcating the 13 April 2002 delimitation line, and pledges to assist UNMEE accordingly. I have been instructed to assure the Commission that as the planned demarcation process gets under way, the Government of Eritrea is committed to supporting UNMEE's operations as they bear on the demarcation, as provided in the Algiers Agreements.

[1] Transcript, 6 September, p. 4.
[2] Transcript, 6 September, p. 6.

- On withdrawal from the TSZ insofar as the present position impinges on EEBC operations:

  The Government of Eritrea's position is that as soon as all of the arrangements for demarcation are in place, Eritrea will remove any Eritrean forces that might meet this description.

- On providing security assurances:

  Eritrea has previously provided security assurances in response to Commission instructions, and intends that these assurances should remain in effect unless the Commission determines that they are somehow insufficient or no longer relevant.

- On allowing free access to pillar locations:

  Eritrea has on no occasion interfered with any Commission attempt to access pillar locations, and pledges that in the future it will continue this policy.

16. Professor Brilmayer's letter of 5 September 2007 stated, further, that "the undertakings described above are predicated on the assumption that Ethiopia will fully meet its legal obligations."

17. In his letter of 5 September 2007 President Isaias Afwerki of Eritrea summarized Eritrea's position as follows:

> Eritrea has consistently held the position that any talks between the Parties, secret or otherwise, on any matter regarding the demarcation of the boundary outside the framework of the EEBC, do not have any legal basis, nor are they helpful. It has not and will not countenance any alternative or parallel mechanism. The only forum for any discussion on the demarcation of the boundary is the EEBC.
>
> In regard to the normalization of relations between Eritrea and Ethiopia and any discussion of such normalization, Eritrea's repeatedly stated position also remains consistent. Eritrea is prepared to consider normalizing its relations with Ethiopia and engage in any necessary discussions pertaining to normalization as soon as the demarcation of the boundary is completed and when a conducive environment for normalization is established. It must indeed be clear that dialogue on normalization would not be acceptable as a precondition for demarcation.

18. Professor Brilmayer submitted that her letter was an attempt to address the Commission's questions "as carefully, precisely and responsibly as possible".[3] She stated a general agreement with what she understood as the Commission's point of view "that this is a meeting at which we ought to set up a practical, workable process and one that will allow us to work through the details as we go along."[4] Professor Brilmayer also emphasized "the difficulty of ensuring reciprocity", stating that "Eritrea is convinced that we cannot simply take reciprocity for granted" and that "our suggestions about what we can bring to the process are importantly dependent on progress made from Ethiopia."[5]

[3] Transcript, 6 September, p. 7.
[4] Transcript, 6 September, p. 8.
[5] Transcript, 6 September, p. 8.

19. Eritrea explained its commitment to mean that, as soon as all arrangements for demarcation were in place, it would remove any Eritrean forces that might fit the description of impinging on EEBC operations, possibly including the total departure of Eritrean forces from the TSZ if EEBC operations were so to require.[6] Ethiopia's response was that it would accept nothing less than "fully unconditional withdrawal of the forces of Eritrea now in the TSZ — occupying the TSZ — in clear violation of the cessation of the hostilities agreement."[7]

20. A Commissioner invited comments from both Parties based on the following summary of Eritrea's position:

> As the planned demarcation process gets under way, the Government of Eritrea is committed to supporting UNMEE's operations as they bear on the demarcation as provided in the Algiers Agreement, it being understood by Ethiopia that those operations require the restoration of UNMEE's freedom of operations to what it was three years ago and by Eritrea that this is not excluded if those operations so require ... What we are left with are three questions of fact. First, what UNMEE operations do bear on the demarcation? Secondly, what Eritrean forces in the TSZ do impinge upon EEBC operations? Those two questions give rise to a third: and how are those questions of fact to be determined?"[8]

> Professor Brilmayer's response was that "Ethiopia says that it is unqualified in its acceptance of the delimitation decision and what that means is that they are prepared to discuss demarcation. That really is not the kind of reciprocity that Eritrea feels like it needs".[9]

Ethiopia's Position

21. Mr. Picard, Counsel for Ethiopia, made a series of observations which did not respond directly to the Agenda, and some of which related to matters outside the scope of the Commission's mandate.

22. Mr. Picard expressed Ethiopia's "disappointment" at the Commission's Agenda for failing to "reflect the reality on the ground" or to "reflect the treaty obligations of the Parties".[10] He stated that "implementation cannot take place in the face of Eritrea's grave violations and clear and continued aggression and threats of force. These have nullified the minimum security conditions necessary for the resumption of demarcation. These actions on the ground have made demarcation practically physically impossible."[11] Mr. Picard stated further:

> [Ethiopia] rejects as a practical matter the notion set forth in the agenda and in Professor Brilmayer's letter to the Commission which we received this morning: the notion that all Eritrea must do is to declare that it is ready to lift restrictions on UNMEE "insofar as they affect the Commission" and "to withdraw from the TSZ insofar as the present position impinges on

[6] Transcript, 6 September, p. 17.
[7] Transcript, 6 September, p. 18.
[8] Transcript, 6 September, pp. 23-24.
[9] Transcript, 6 September, p. 28.
[10] Transcript, 6 September, p. 9.
[11] Transcript, 6 September, p. 12.

> Commission operations". The notion that this would allow demarcation to go forward is simply not in touch with reality.[12]

23. Ethiopia's substantive response to the conditions set out by the Commission in its Agenda was as follows:

> Ethiopia cannot accept what appears to be indications by the Commission that Eritrea would not be required to withdraw fully from the TSZ.[13]

According to the Co-Agent for Ethiopia, it was for the purposes of demarcation that the Parties agreed to withdraw from the TSZ, which was a fundamental condition of the Cessation of Hostilities Agreement, compliance with which was additionally an obligation under Article 1 of the Algiers Agreement. For this reason, no discussion could take place on the demarcation issue "as long as full compliance with the Cessation of Hostilities Agreement on TSZ and UNMEE is [not] restored; not insofar as, not as long as it does not affect the work of EEBC. That is totally unacceptable to us."[14]

24. A Commissioner asked of Ethiopia: "if Eritrea were to withdraw all of its forces from the TSZ, would the Government of Ethiopia be in a position to commit itself unconditionally to cooperate in the process of demarcation?"[15] The Co-Agent for Ethiopia responded that "assuming Eritrea withdraws fully troops and equipment from the TSZ ... then we will be back and we will engage in the discussion of demarcation. Now we are saying that we will not engage in the discussion on demarcation because the situation on the ground has changed. We are not going back now, but, if the situation changes, then we will sit down and discuss the issue of demarcation, which is the second part of your mandate."[16]

25. A Commissioner then referred to the five conditions specified in the Agenda and asked if Ethiopia, supposing Eritrea were willing to move out of the whole of the TSZ, were willing to comply with those conditions and implement all of them.[17] Mr. Picard responded that "once this serious problem of return of the temporary security zone to its proper state, as required by the Algiers Agreements, and once UNMEE is allowed to fulfil its obligations by no longer being hindered in its operations throughout the zone, once those problems are dealt with, the other points that the Commission has raised are certainly not going to provide a problem"[18] and "The problem really is Eritrea's violations of the Algiers Agreements are so fundamental and so material and so direct a threat to Ethiopia that this conduct simply has to change in fundamental ways before there will be any confidence that we can have productive discussions on demarcation."[19]

26. In response to a question by a Commissioner, Mr. Picard confirmed that in effect Ethiopia was requiring three conditions to be met, namely the concept of demarcation originally adopted by the Commission; ceasing of activities alleged to be conducted by or on behalf of Eritrea in other parts of Ethiopia; and activities

[12] Transcript, 6 September, pp. 12-13.
[13] Transcript, 6 September, p. 13.
[14] Transcript, 6 September, p. 17.
[15] Transcript, 6 September, p. 19.
[16] Transcript, 6 September, pp. 19-20.
[17] Transcript, 6 September, p. 20.
[18] Transcript, 6 September, p. 20.
[19] Transcript, 6 September, p. 21.

alleged to be conducted by or on behalf of Eritrea against Ethiopia in Somalia. Ambassador Yimer objected to the demanding of "some concession" from Ethiopia in return for Eritrean compliance with existing obligations, and stated that Ethiopia's demand was for the *status quo ante* to be restored.[20]

27. As to the summary of the position of Eritrea set out above in paragraph 20, Ambassador Yimer responded that "The Government position is that before we enter into any discussion of anything regarding demarcation, anything, before anything is under way on demarcation, the situation on the ground has to change."[21]

28. Regarding the other question by a Commissioner, that, "If the Eritrean Government were prepared to commit itself to total withdrawal from the TSZ and restoration of the *status quo ante* of UNMEE, would your Government be in a position to commit itself to accept the demarcation of the border pursuant to the coordinates set out in the November 2006 Statement of the Commission?",[22] Ambassador Yimer replied:

> once this is done, the *status quo ante* of UNMEE is restored, the Ethiopian Government is prepared to sit down and discuss with you a demarcation process, which is the second phase of your mandate ... We will embark upon the discussion of the demarcation process, because it has stopped now.[23]

29. Asked further by a Commissioner whether Ethiopia was prepared to apply the Delimitation Decision through demarcation without broader negotiations and without discussion, the Ambassador stated: "I am not saying we would not engage in a discussion and there will not be any demarcation. There will be and we have to sit down and discuss and be prepared to discuss demarcation without any condition to be engaged with you ... but there is a very serious situation which has to be removed now."[24] The Commission observes that, even if all of Ethiopia's conditions were met by Eritrea, Ethiopia would not commit itself to anything more than discussion on demarcation.

Conclusion of the Meeting of 7 September 2007

30. In closing the meeting, the President reminded the Parties that the effect of the Commission's Statement of 27 November 2006 is that the demarcation by coordinates identifying with precision the locations where pillars should be in place will become effective at the end of November unless in the interval the Parties act so as to produce a new situation.[25] The President reminded the Parties that the line prescribed by joining the coordinates specified in the annex to the Statement of November 2006 had been drawn taking into consideration the observations of the Parties, and differs only to a limited extent from the line in the Delimitation Decision of April 2002.[26] The President stated:

> Needless to say we greatly regret that we could not take our work through to its full conclusion, but at least we leave you with a line that is operable. It is

[20] Transcript, 6 September, p. 22.
[21] Transcript, 6 September, p. 25.
[22] Transcript, 6 September, p. 25.
[23] Transcript, 6 September, p. 26.
[24] Transcript, 6 September, p. 26.
[25] Transcript, 7 September, p. 3.
[26] Transcript, 7 September, p. 4.

up to you to work out how to implement it. It is up to you to consider such devices as open boundaries so that some of what you identify as manifest absurdities because a line cuts a village or a road several times can be overcome by allowing the boundary to be open and nationals to pass freely from one side to the other or even to cultivate their fields on the other side.[27]

31. The Commission expressed its appreciation of the work done by UNMEE during the period when it was able to provide assistance and of the work of the United Nations Cartographic Section and the Permanent Court of Arbitration.[28]

Next Steps

32. Following the exchange of views at the meeting with the Parties of 6 and 7 September 2007, if the positions of the Parties have not changed by the end of November 2007, the boundary will automatically stand as demarcated by the boundary points listed in the Annex to the Statement of 27 November 2006. The Commission will then remain in existence only for the purpose of administrative matters connected with the termination of its mandate.

Financial Arrears

33. Ethiopia continues to be in default on payment of its share of the Commission's expenses.

34. At the meeting on 7 September 2007 Eritrea raised the issue of Ethiopia's payment of its financial arrears as expressly required by the Algiers Agreement.[29] The President recalled that on 16 March 2006, the Registrar of the Tribunal requested payment of a deposit and this was followed up with an email to the Co-Agents of the Parties on 31 March confirming that the Commission had received the deposit from Eritrea. On 18 May 2006 the Registrar required the immediate payment of the Ethiopian deposit. On 21 May 2006, there was a letter from Counsel for Ethiopia to the President indicating that the Government of Ethiopia had approved payment of the deposit. No payment was made. In November 2006 there was a conversation between the Registrar and Mr. Rowe in this connection and between 16 and 27 April 2007 there was a conversation between the Registrar and Mr. Picard at the premises of the Permanent Court of Arbitration.[30] Mr. Picard responded that he had not received any further instructions on this matter.[31]

35. The Registrar of the Commission clarified that, if the Commission received Ethiopia's $250,000 deposit in March 2006, it would still have had to require from each Party an additional $750,000 to meet the obligations of the Commission already incurred. As at 7 September 2007, the Commission had not asked for further deposits from Eritrea, because it had never received the Ethiopian deposit.[32] The President recalled that the Commission had been obliged to turn to the United Nations Trust Fund, which had disbursed approximately $500,000.[33] Thus it was

[27] Transcript, 7 September, p. 4.
[28] Transcript, 7 September, p. 5.
[29] Prof. Brilmayer, Transcript, 7 September, p. 5.
[30] Transcript, 7 September, pp. 5-6.
[31] Transcript, 7 September, p. 6.
[32] Transcript, 7 September, p. 6.
[33] Transcript, 7 September, p. 6.

drawn to the attention of the Parties that Ethiopia is still in arrears and both sides will have to be asked to make a further contribution towards the expenditure already incurred but not covered.[34]

(*Signed*) Sir Elihu **Lauterpacht**
President of the Eritrea-Ethiopia Boundary Commission
28 September 2007

[34] Transcript, 7 September, p. 7.

Attachment I

President Sir Elihu Lauterpacht
Eritrea Ethiopia Boundary Commission
Permanent Court of Arbitration
The Hague, the Netherlands

5 September 2007

Dear President Lauterpacht:

I am writing in regard to the Agenda you circulated in advance of the 6 September 2007 meeting of the Boundary Commission in The Hague. Your Agenda sets out a series of points on which the Commission requests the parties to clarify their commitments for the record. Eritrea's positions on the four points addressed to it are as follows.

First, the Commission has asked whether Eritrea is prepared to facilitate UNMEE's activities in so far as they affect the operations of the EEBC. Eritrea recognizes UNMEE's essential and positive contribution to the process of demarcating the 13 April 2002 delimitation line, and pledges to assist UNMEE accordingly. I have been instructed to assure the Commission that as the planned demarcation process gets underway the Government of Eritrea is committed to supporting UNMEE's operations as they bear on the demarcation, as provided in the Algiers Agreements.

Your second request is for Eritrea's assurances that it will remove any Eritrean military presence in the TSZ "in so far as the present position impinges on EEBC operations". The Government of Eritrea's position is that as soon as all of the arrangements for demarcation are in place, Eritrea will remove any Eritrean forces that might meet this description.

Third, the Commission asks for Eritrea's security assurances. Eritrea has previously provided security assurances in response to Commission instructions,

and intends that these assurances should remain in effect unless the Commission determines that they are somehow insufficient or no longer relevant.

Finally, Eritrea is requested to guarantee that it will allow free access to all pillar locations. Eritrea has on no occasion interfered with any Commission attempt to access pillar locations, and pledges that in the future it will continue this policy.

In light of the problems that have been experienced over the last five years due to Ethiopia's failure to comply with Commission decisions and instructions, it is unfortunately necessary for Eritrea to inform the Commission that the undertakings described above are predicated on the assumption that Ethiopia will fully meet its legal obligations.

As the Agenda requests, I plan to reiterate Eritrea's positions on these matters for the record after your opening remarks at the forthcoming meeting.

Very truly yours,

Lea Brilmayer
Legal Advisor to the Office of the President

Asmara, 5 September 2007

Sir Elihu Lauterpacht
President, the Eritrea-Ethiopia Boundary Commission
Permanent Court of Arbitration,
The Hague, Netherlands

Dear Mr. President,

Allow me to express my best wishes for the good health of your person.

I am writing this letter to put on record our profound apprehension about plans apparently underway to prevent the forthcoming EEBC meeting from addressing the critical issue on its agenda. Let me emphasize at the outset that I have no desire to compound your heavy burden. Nonetheless, remarks made in a press conference given by a US Assistant Secretary of State, Ms. Jendayi Frazier, on August 17 last month constitute political interference intended to induce negative bearings on the legal process. We have thus no option but to report our views candidly and unequivocally. Let me proceed to quote the relevant parts of her statement:

> On the Eritrea-Ethiopia boundary issue, we are pleased that both countries have agreed to meet again under the auspices of the EEBC, under the Boundary Commission. And they are working very closely with Norway. And we would expect the UN role also in this next meeting. So we think that the process perhaps will move forward on there, but both countries, Ethiopia and Eritrea, have violated their own responsibilities to solving the Boundary Commission, the boundary dispute. And it continues to be a source of tension that is undermining not only the two countries, but, again, the region as a whole....

What the Eritrean Government said was that they did not want me to go to the border. My plan was to go to the border through Asmara and then to Ethiopia.... I said, the only purpose of coming is to go to the border. And so I went through Ethiopia instead of Eritrea. We are asked to come in by Kofi Annan before sanctions would be placed on Eritrea and Ethiopia, to try to mediate between them, to try to make, get forward motion on the Boundary Commission. We did get forward motion because we brought Ethiopia back to the table. Ethiopia had refused to go to the Commission before. We brought them back to the table. We got Meles to say he would accept the delimitation decision without conditions. But we lost Eritrea Eritrea then walked away from the Boundary Commission. Now they are coming back together. Those sanctions which were being considered were put on hold to give time for a diplomatic effort. Our diplomatic effort stalled when we suggested that there be technology, satellite technology, to look at how decisions on the demarcation of the border would affect the local communities. Because we felt that it was extremely important for Ethiopia and Eritrea to discuss how they were going to manage the impact on communities on the border, because some territory that was previously Eritrea would go to Ethiopia, some territory that was previously Ethiopia would go to Eritrea. So you had to address those local issues. Some farms would be split from their wells

Mr. President,

You will recall the strong reservations and protests we have made in the past against attempts to interfere with the EEBC's legal proceedings. Such political interference threatens to distract the forthcoming meeting from its legitimate agenda. We are therefore compelled to put on record our views.

1. Assistant Secretary of State Frazier's comments (which are phrased as though she has the authority to dictate the meeting's agenda) refer to a United Nations role without providing specifics. She mentions a role for Norway as well. The responsibilities of the United Nations under the Algiers Agreement are evident, but it is difficult to understand what legal role Norway might have.

2. She asserts that both countries have violated their responsibilities. Such apportionment of blame equally between the two parties, so as to accuse Eritrea, is not new. It is baseless and remains unacceptable.

3. In as far as her visit to the border is concerned, her illegal entrance into occupied Eritrean areas through Ethiopia effectively condones the invasion of the territories of a UN member State. It was both unlawful and ill-advised, and Eritrea objected to it at the time. Her support for alterations to the EEBC Award are indicative of the underlying motivations and purpose of her visit.

4. Ms. Frazier claims that she brought Ethiopia back to the table and induced it to accept the delimitation decision without conditions. Her claims raise many questions and (if true) serve only to reinforce our apprehension on the ultimate object of illegal interference. Moreover, her assertion "[b]ut we lost Eritrea... Eritrea then walked away from the Boundary Commission" is simply untrue.

5. Ms. Frazier alludes to "satellite technology" and to communities that will be affected by the Award. The allegation that "some farms will be split from their wells" is simply another variant of the "dialogue" argument invoked earlier in an attempt to dilute and nullify the Commission's final and binding Award. It has no legal or moral basis and we reject it, as has the Commission.

Mr. President,

What I have highlighted above constitutes only a small part of what was asserted at the press conference. But the effort underway to derail the 6 September meeting and to preclude indefinitely a resolution of the matter goes beyond mere advocacy for adjustments. I would have wished that this were not true.

The pretexts are, as usual, packaged benignly. Some of the ones typically invoked include:

- "Dialogue between the parties": As we have repeatedly explained, we are unwilling to become entangled in what are essentially efforts to undermine the Commission's legal decisions and to embroil ourselves in barren and endless wrangling.
- Preoccupation that villages, churches and mosques might be divided: This earlier version of the argument has now been repackaged as "farms being split from their wells". Apart from its factual inaccuracies and legal irrelevance, this misplaced concern ignores the suffering of tens of thousands of our citizens who have languished in makeshift camps for years. The churches and mosques that were desecrated during the invasion, and the numerous villages that were razed to the ground, are still fresh in our memories.
- Communities that (supposedly) will be divided: This argument is at variance with the reality of borders and boundaries all over the world.
- "Normalization of relations" is possible only once the boundary has been demarcated. Indeed, it has only been delayed by the efforts in question to disrupt demarcation indefinitely.
- In regard to UNMEE: At a time when Ethiopia has breached the Commission's instructions on the "evacuation of its troops and the dismantling of illegal settlement" and rejected the Award, the measure we took to safeguard our sovereign rights, alleviate the humanitarian

suffering of our people and stem the deterioration of our lands have been exaggerated and blown out of proportion and misconstrued – even though it may have entailed minor inconveniences to UNMEE - as a deliberate act of obstruction of demarcation and a violation of the binding Award. This apparent misrepresentation is not justifiable.

- Smear campaigns and allegations on terrorism that are underway through the falsification and fabrication of facts are, likewise, designed to create obstacles to the implementation of the EEBC's Award.

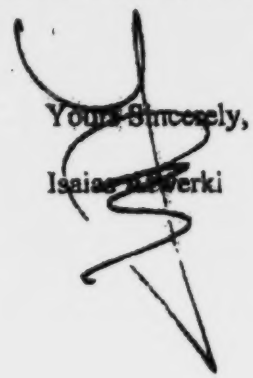
The underlying object of these efforts is not to promote the implementation of the EEBC Award or to expedite demarcation. The overriding objective is to render the EEBC proceedings fruitless and ineffective.

In this vein, we were approached just recently to consider a "proposal" for a "secret meeting" between the parties around the fringes of the UN General Assembly meeting later this month. We were further told, quite bluntly, that the current EEBC meeting will be "inconsequential". In this connection, we have already reiterated our stance clearly and firmly. And that is:

> Eritrea has consistently held the position that any talks between the parties, secret or otherwise, on any matter regarding the demarcation of the boundary outside the framework of the EEBC, do not have any legal basis, nor are they helpful. It has not and will not countenance any alternative or parallel mechanism. The only forum for any discussion on the demarcation of the boundary is the EEBC.
>
> In regard to the normalization of relations between Eritrea and Ethiopia and any discussion of such normalization, Eritrea's repeatedly stated position also remains consistent. Eritrea is prepared to consider normalizing its relations with Ethiopia and engage in any necessary discussions pertaining to normalization as soon as the demarcation of the boundary is completed and when a conducive environment for normalization is established. It must indeed be clear

that dialogue on normalization would not be acceptable as a precondition for demarcation.

In conclusion, Eritrea's consistent position has been that this process should be managed as a legal one, consistently with international law. Eritrea comes to this meeting with legal answers to the questions proposed by your Agenda, which are outlined in a letter submitted today by our legal counsel.



Yours Sincerely,

Isaias Afwerki